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No. 88-

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

IMAD A. AHMAD, LIBERTARIAN PARTY OF MARYLAND,
Petitioners,

v.

GENE M. RAYNOR, in his official capacity as
Supervisor of Elections of Maryland,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether, in violation of the First and Fourteenth Amendments, Maryland invidiously discriminates against the political candidates of qualified political parties with which fewer than 10% of all registered voters have affiliated by refusing to print the names of their candidates on the ballot unless each candidate meets a requirement imposed on candidates not affiliated with a qualified political party.

2. Whether the Fourth Circuit Court of Appeals erred in ignoring its own precedent, affirmed by this Court, that the petitioning requirement imposed by Maryland law for qualifying a new political party does serve the state interest in requiring candidates and political parties to show some degree of support.

3. Whether the Fourth Circuit Court of Appeals erred in its assertion that the state has an interest "in regulating political parties" outside the context of access to the ballot of the party's candidates, in conflict with the decision of this Court and of other Courts of Appeals, in upholding Maryland's discriminatory and burdensome petitioning requirements for nonprimary parties.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

OPINIONS BELOW

The opinion of the United States Fourth Circuit Court of Appeals is not officially reported. It is reproduced in Appendix A (App. 1a-4a). The decision of the Federal District Court in Maryland is not officially reported and is reproduced in Appendix B (App. 5a-14a). The order denying a rehearing is not officially reported and is reproduced in Appendix C (App. 15a).

JURISDICTION

The judgment of the Court of Appeals was entered on October 27, 1988; a timely petition for rehearing was denied on January 5, 1989. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The statute challenged by petitioners is Article 33 § 4B-1 (h) of the Annotated Code of Maryland which reads in relevant part that:

> "Unless the party is required to select its nominees for public office by primary election pursuant to § 5-1 of this article, the nominees for public office of the party shall be selected in the manner provided in the interim constitution and bylaws of the party but no such nominee shall appear upon the ballot at any general election unless the nominee has complied with all the requirements of the provisions of the subtitle 'Nomination by Petition' of this article, including the filing of petitions with the election board or the several boards of the State, which shall bear in addition to the name of the nominee, the name of the party, signed by ~~not~~ less than three percent (3%) of the registered voters who are eligible to vote for the office for which election at the general election is sought . . . ."

The modicum of support required for qualification as a political party is given in Article 33, § 1-1 (15) of the Annotated Code of Maryland which reads in pertinent part:

> "'*Party*' or '*political party*' as used in this article means an organized group of the electorate that attempts to control government through the election of its candidates to office, and which either:
>
> (i) Polled 3 percent or more of the entire vote cast on the State in the last general election held in the State; or
>
> (ii) Filed a valid petition for the formation of a political party pursuant to § 4C-1 of this article . . . ."

and Article 33, § 4B-1 (a) of the Annotated Code of Maryland which reads in pertinent part:

> "Appended to the petition in the manner hereinafter provided shall be papers bearing the signatures of at least 10,000 registered voters of the State."

The defining distinction between a party required to hold a primary election and those which are not is set forth in Article 33, § 5-1 (a) which reads in pertinent part:

> "Any political party with which ten per centum or more of the registered voters of this State are affiliated, as shown by the most recent statement of the State Administrative Board of Election Laws . . . shall at the next succeeding primary election conducted under the provisions of this subtitle: (1) nominate all its candidates for public office . . . ."

Petitioners quote Article 33, § 8-1(a)(1) of the Maryland Annotated Code to demonstrate that unopposed candidates of primary parties are given a place on the ballot without having to show any modicum of support:

> "Whenever only one candidate of any such political party has qualified to have his name placed upon the official primary ballot at the expiration of time allowed, for any public office or position, a certificate of nomination shall be issued to him forthwith."

Petitioners' challenge is based on the First and Fourteenth Amendments to the United States Constitution. The First Amendment reads:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Fourteenth Amendment reads in pertinent part:

> "1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein

they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States. Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and, citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

STATEMENT OF THE CASE

Under Maryland law political parties are distinguished from other political organizations in that they are required to show a substantial modicum of support by submitting a petition bearing the signatures of 10,000 registered voters. They maintain or regain such status by averaging 3% of the vote in statewide races or resubmitting 10,000 valid signatures after each general election. At the time the Appeal was filed the Libertarian Party of Maryland (LPMD) fulfilled this requirement for qualification as a political party by submission and acceptance by the State of Maryland of over 10,000 valid signatures of registered voters.[1] As an established polit-

[1] The fact that the LPMD has met the requirement for showing a significant modicum of support under Maryland law but was

ical party, the LPMD has been obligated to fulfill all the requirements imposed upon a political party by Maryland law.

In compliance with the procedures for selection of candidates for public office contained in its constitution and bylaws, the LPMD duly nominated Dr. Imad A. Ahmad as its candidate for the office of U.S. Senate in the 1988 election.

Notwithstanding his being duly nominated by the LPMD, the State Administrative Board of Election Laws (SABEL) refused to place Dr. Ahmad's name on the ballot. (App. 8a). The sole reason given for denial was the fact that the LPMD had not complied with the requirement of Maryland Code, Art. 33, § 4B-1(h): that political parties with which fewer than 10% of the voters had affiliated must submit for each candidate petitions containing signatures of at least 3% of the registered voters in Maryland or approximately 62,000 signatures in the case of Dr. Ahmad.

As a result of this refusal, Dr. Ahmad and the LPMD filed suit in District Court against Gene Raynor in his official capacity as Administrator of the SABEL challenging the constitutionality of the signature requirement as applied to a political party which has demonstrated a modicum of support.

Petitioners contended that the requirement of additional signatures for the candidate of a political party which had already established a significant modicum of support

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denied a place for one of its candidates on the ballot makes this case extraordinary. The LPMD originally acquired its political party status under Maryland law in 1980 and has repeatedly submitted 10,000 signatures every two years since the 1982 elections to regain ballot status after each biennial election. Another petition drive is under way now to regain ballot status.

placed an unconstitutional burden upon the petitioners and unconstitutionally discriminated against them in violation of the First and Fourteenth Amendments to the United States Constitution.

Initially, Dr. Ahmad and the LPMD sought a preliminary injunction to compel Mr. Raynor to issue Dr. Ahmad a "Certificate of Nomination" and to certify Dr. Ahmad to the local election boards as the candidate of the LPMD. As Mr. Raynor did not contest the facts alleged, he shortly thereafter sought a judgment on the pleadings to resolve the legal issues. After Dr. Ahmad and the LPMD filed a cross-motion for judgment on the pleadings, the Federal District Court in Maryland heard oral argument on the parties' motions for judgment on the pleadings and, from the bench, ruled in favor of Mr. Raynor. Petitioners then appealed to the United States Court of Appeals for the Fourth Circuit.

The Fourth Circuit Court of Appeals affirmed the District Court decision (App. 1a-4a). Petitioners filed a motion for a rehearing on the grounds that (1) the Appeals Court decision is in conflict with other decisions and statutes, (2) the Petitioners had waived right to oral argument before the Appeals Court for the sole purpose of receiving an expedited hearing well in advance of the election but instead did not receive a decision until October 27, 1989, only twelve days before the election. The petition for a rehearing was denied (App. 15a).

On March 27, 1989, Petitioners then filed for an extension of time for filing a petition for certiorari which was subsequently granted by this Court. The present petition followed.

REASONS FOR GRANTING THE PETITION

This petition seeks review of the decision of the United States Court of Appeals for the Fourth Circuit, upholding the provision of Maryland's election laws that requires that each candidate of a political party with which less than ten percent of the state's voters are affiliated to file the signatures of 3% of the voters registered to vote for the office sought before the candidate's name shall be printed on the ballot. The decision below is in clear conflict with various decisions of this Court and of other Circuit courts.

I. The Decision Below Is in Conflict with Prior Decisions of This Court

The decision below correctly noted that "because of the fundamental importance of allowing voters to support candidates of their choice, states cannot unduly burden efforts to achieve a place on the ballot." (App. 2a-3a). It has been repeatedly emphasized that,

> "Restrictions on access to the ballot burden two distinct and fundamental rights, 'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.'"

Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 172, 184 (1979), quoting *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). Freedom of association protected by the First and Fourteenth amendments includes the selection of "a standard bearer who best represents the party's ideologies and preference." *Ripon Society, Inc. v. National Republican Party*, 173 U.S. App. D.C. 350, 384, 525 F. 2d 567, 601 (1975) (Tamm, J., concurring in result), *cert. denied*, 424 U.S. 933 (1976). It is now well established that states restricting access to the ballot must demonstrate nothing less than that the statute is "necessary to further compelling state interests." *American Party of Texas v. White*, 415 U.S. 767,

780 (1974); *Kusper v. Pontikes*, 414 U.S. 51, 56-59 (1973); *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). The imposition of an additional signature requirement on the candidate of a qualified political party which has demonstrated a modicum of support does not meet this standard.

A. Maryland's Additional Signature Requirement for the Candidates of Nonprimary Parties Unconstitutionally Burdens Fundamental Rights and Invidiously Discriminates Against Candidates of Smaller Qualified Parties Without Serving Any Compelling State Interests

The decision below concludes that "states have a legitimate, indeed a compelling interest, in requiring a candidate to show a significant 'modicum of support' before permitting his or her name on an official ballot." (App. 3a). The decision below errs in not recognizing that that interest has been met by the modicum of support demonstrated by the political party in submitting its 10,000 signatures to attain the status of a nonprimary political under Maryland law.[2] Maryland Annotated Code art. 33, § 1-1 and § 4B-1 (a).

The decision below exhibits confusion in failing to distinguish between the present case involving a qualified "nonprimary" party, as defined by sections 1-1, 4B-1 (a) and 5-1 of article 33 of the Maryland code and cases involving "minor" parties—*i.e.*, parties which are not ballot qualified because they have shown no modicum of support.

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[2] The burden of proof for demonstrating a compelling state interest falls on the state. No compelling state interest has been demonstrated. In 1986 when the state of Maryland last elected state legislators there was only one candidate on the ballot in 78 of the 182 races. Maryland State Board of Election Laws, November 4, 1986 General Election Returns. Since the stiffening of ballot requirements in 1971 there have been no third party candidates (labeled as such) for state office or federal office other than President with the sole exception of one Congressional candidate in 1984.

There is absolutely no authority—and the decision below cites none—for the Appeals Court's assertion that the state has an interest "in regulating political parties" outside the context of access to the ballot of the party's candidates.[3] Indeed, the Supreme Court's decision in *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986) reflects that Court's view that there is *no* state interest in regulating political parties independent of regulating their candidates' access to the ballot.

The Fourth Circuit Court's confusion is clearly manifested in its erroneous statement that "the nominees of parties which are 'primary' parties are placed on the general election ballot *after* a properly conducted primary." (App. 2a), emphasis added. This is incorrect. The Appeals Court has overlooked Art. 33, § 8-1(a)(1), which permits an unopposed candidate with no voter support whatsoever to be the nominee of a "primary" party before any primary is held. Clearly, to be a candidate of a "primary" political party, a person need not stand for election in a primary and, as a result, need not demonstrate support from the party or any of its members to be the party's nominee. Thus, the level of party registration does not necessarily indicate voter support for a particular nominee of that party. It follows that it is emphatically *not* "entirely reasonable" to infer that the *nominee* of a "primary" party, because the party has achieved "a high indicum of public support," has "adequate support."[4] That being the case, the conclusion of

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[3] It defies imagination to believe that a political organization would undertake the effort necessary to gather 10,000 signatures simply for the purpose of being regulated by the state. Plainly, the Maryland Libertarian Party submitted the 10,000 signatures to demonstrate a significant modicum of support so that it could place its candidates on the ballot.

[4] The error of the Appeals Courts' claim is manifest when one considers that Dr. Ahmad himself could have changed his registration to Republican and run in the uncontested Republican primary for the 7th Congressional District. See *Washington Post*, Nov. 10,

the Fourth Circuit Appeals Court that the state may deny candidates of "non-primary" political parties ballot status in the absence of an additional demonstration of voter support while granting such status to candidates of "primary" political parties is invidious discrimination and is constitutionally unfounded.

B. The Decision of the Court Below Ignored a Question Settled in This Court's Ballot Access Decisions

In concluding that the signatures submitted by the Libertarian Party of Maryland to attain the status of political party under Maryland law does not serve the purpose of demonstrating a modicum of support for ballot access, the decision below is in clear conflict with this Court which affirmed *Mathers v. Morris*, 515 F.Supp. 931 (D.Md. 1981), *aff'd*, 649 F.2d 280 (4th Cir. 1981), *aff'd*, 454 U.S. 934 (1981), a decision not even addressed in the decision below.

In *Mathers* the District Court held and both the Appeals Court and this Court affirmed that

> "The Supreme Court has clearly recognized the state interest in requiring candidates and political parties to demonstrate some degree of support before granting them access to the ballot . . . . The Maryland requirements that a political organization gather 10,000 signatures for initial qualification as a political party . . . *obviously serve[s] that substantial state interest.*" (emphasis added) 515 F.Supp. at 936.

Clearly, therefore, in *Mathers* this Court viewed the 10,000 signature requirement as justified because *it* prevented the "long and complicated ballot." The decision below conflicts with this decision by concluding that this interest must be dealt with by other means—specifically, the requirement of *additional* signatures for candidates of

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1988, p. D11. It would certainly not have been reasonable to infer from this that he had "adequate support."

political parties which have already demonstrated a modicum of support.

The Appeals Court has placed itself in conflict with this Court by overlooking *Mathers* and by refusing to grant a rehearing to address it.

C. The Decision of the Court Below is in Conflict with the Standards Enunciated in This Court's Ballot Access Decisions

Finally, the Appeals Court has also placed itself in conflict with this Court in arguing that the discrimination against nonprimary parties is justified by the fact that "in order to qualify as a 'primary' party an organization must have a high indicum of public support." To require a 'high indicum' of public support before a political party may have all its candidates on the ballot is to elevate the standards far beyond the "significant modicum of support" required by this Court.[5]

II. The Decision Below Is in Conflict with Decisions of Other Circuit Courts

In the decision below the Fourth Circuit Court of Appeals concluded that the Maryland law is not in conflict with *Tashjian* because the requirement "to qualify a candidate by collecting signatures from any registered voter" is different from a law that "explicitly excluded non-Republicans from Connecticut's Republican primaries." This directly conflicts with the decision of the First Circuit Court of Appeals in *Hopfmann v. Connolly*, 769 F.2d 24, a decision let stand by this Court (479 U.S. 1023, 1987). Hopfmann was denied access to the ballot by a

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[5] It is simple mathematics to demonstrate that to run a complete slate of candidates a "nonprimary" party would need many more signatures for support of its candidates than a "primary" party needs registrants to show support for its party. Contrary to the decision below, laws requiring political parties to have a certain number of registered voters have been repeatedly struck down. (See citations in Section III, below.)

Democratic Party rule that limits ballot access in the state primary to candidates who receive at least 15% of the vote at a state convention. Such a rule empowers a very small number of people to determine who may be the candidate of a particular political party—even if that candidates gets few or no votes in the subsequent primary. Yet the First Circuit Court recognized that right while the Fourth Circuit Court has rejected it in the present case. (App. 4a).

III. The Decisions Below Involves Important and Recurring Constitutional Questions and Presents an Appropriate Vehicle for Resolving Such Questions in a Deliberate and Considered Fashion

The conclusion in the decision below that the number of voters registered to a political party is a valid criterion for discriminating between them as to whether to place their candidates on the ballot is also in conflict with numerous other decisions: *Workers World Party v. Vigil-Giron*, 693 F. Supp. 989 (1988), *Consumer Party v. Davies*, 606 F. Supp. 1008 (1985), at 1018; *Fraenzel v. Secty. of Commonwealth*, 478 A.2d 903 (1984) at 906; *North Carolina Socialist Workers Party v. North Carolina Bd. of Elections*, 538 F. Supp. 864 (1982). The implication in decision below that in order to be protected from discrimination the LPMD would have to obtain additional registered members clearly contradicts *Hall v. Austin*, 495 F. Supp. 735 (1984), which held that ballot access must be contingent only on support for the candidate or party to be on the ballot and *not* that supporters join the party or vote for its candidates.

The issues involved here are of fundamental importance to any democracy. This was well demonstrated by the attorneys for John Anderson in their successful petition for certiorari to this Court, *Anderson v. Celebreze*, petition for cert. (1983), and we borrow from their presentation in the arguments below:

This Court's decisions have established that "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Westberry v. Sanders*, 376 U.S. 1, 17 (1964). Further, "[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynold v. Sims*, 377 U.S. 533, 555 (1964). The fact that the Libertarian Party of Maryland successfully obtained the 10,000 signatures necessary for ballot status demonstrates that there is a significant modicum of support among the electorate for the candidates of that party to be on the ballot. The laws that determine which parties' candidates may be on the ballot are made by the parties that are on the ballot. Unless the principles in this case are clarified, an indispensable check in the American system of checks and balances will be by-passed. It is of vital importance that these questions be addressed now and not under the heat of a future election in which Maryland's or Pennsylvania's or some other state legislatures' ballot access restraints are challenged. To absolve a law such as Maryland's of the scrutiny of this Court is an invitation to the political parties in power in other states to pass similar legislation.[6]

In concluding that the additional signature requirement is constitutional, the decision below made reference to the possibility that, if Appellants were successful in the instant case, the state might actually increase the requirements for recognizing a political party, commenting that "the likely effect for Maryland Libertarians would be to destroy the very recognition that the party now enjoys."[7]

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[6] The issue is one of national scope: over one-third of the state legislative races in November 1988 had only one candidate on the ballot (*Wall Street Journal* 11/2/88 p. A16).

[7] This assertion is entirely speculative and should not have played any part in this Court's analysis.

(App. 3a). Such a statement overlooks the fact that the (LPMD) does not "enjoy" recognition at present since the *raison d'etre* of a political party is to run and elect candidates, and the provision of Maryland law being challenged herein denies all LPMD candidates ballot status, except for those who fulfill all requirements which candidates unaffiliated with a political party must fulfill anyway.

In this regard, it should be emphasized that the law being challenged herein specifically states regarding the candidates of "non-primary" parties that:

> *no* such nominee shall appear upon the ballot at any general election unless the nominee has complied with all the requirements of the provisions of the subtitle 'Nomination by Petition' of this article . . . . (emphasis added) Article 33 § 4B-1 (h).

If strictly and literally applied, this provision would deny all candidates of "non-primary" political parties ballot status unless meeting additional requirements imposed upon independent candidates. In other words, the law confers no rights on "nonprimary" parties, only obligations.

CONCLUSION

Our conclusions are substantially the same as those of the attorneys for John Anderson in their successful petition for certiorari from this Court in *Anderson v. Celebreze*, *supra*. With minor changes to address the particulars of the present case, we repeat their eloquent argument in the next paragraph and its footnote:

Although petitioners submit that this Court's decisions have been clear with regard to the standard for review of ballot access restrictions substantially burdening fundamental rights, the decision below manifests confusion about what that standard is and refers to cases in which the standard was not met whereas the standard has been met in the instant case. This case provides this Court an

opportunity to clarify the implications of its own prior decisions and to resolve conflicts in understanding of those decisions between different Circuit Courts. Challenges to state ballot access requirements often arise in the heat of an election when normal appellate procedures may be foreshortened or bypassed. Here, however, this Court may resolve the important constitutional questions posed by the decision below in a deliberate and considered fashion.[8]

Respectfully submitted,

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[8] It is well-established that issues of this sort, being capable of repetition yet evading review, do not become moot once the election is held. *See, e.g., Storer v. Brown*, 415 U.S. at 737 n.8.

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2605

IMAD ALDEAN AHMAD,
Libertarian Party of Maryland,
Plaintiffs-Appellants,

versus

GENE M. RAYNOR, Administrator,
Maryland State Administrative Board of Election Laws,
Defendant-Appellee.

Appeal from the United States District Court
for the District of Maryland, at Baltimore
Norman P. Ramsey, District Judge

Submitted: August 29, 1988 Decided: October 27, 1988

Before WIDENER, HALL, and CHAPMAN, Circuit Judges.

Richard E. Gardiner, Atiq R. Ahmed for Appellant. J. Joseph Curran, Jr. (Attorney General of Maryland, Jack Schwartz, Carmen M. Shepard, Assistant Attorneys General on brief) for Appellant.

PER CURIAM:

This appeal presents a constitutional challenge to Maryland's ballot access law. MD. CODE ANN. art. 33, § 4B-1(h) (1986) by the Libertarian Party of Maryland and its candidate for the United States Senate. Appellants argue that the statute violates the First and Fourteenth Amendments by impermissibly burdening their ability to support the candidate of their choice and by illegally discriminating against their "non-primary" political party. More specifically, they contend that the district court erred in holding that the statute's petition requirement and its prescribed differences in treatment between "primary" and "non-primary" parties serve a compelling state interest. Appellants' also maintain that the Maryland law unconstitutionally forces them to associate with non-party members in their effort to place a candidate on the ballot.

Maryland's election statute provides two ways in which the candidate of a political party may be placed on the state's general election ballot. First, the nominees of parties which are recognized as "primary" parties are placed on general election ballots after a properly conducted primary. A "primary" party is a political organization with which at least ten percent of the state's registered voters are affiliated. MD. CODE ANN. art. 33, § 5-1-3 (1986). Second, the candidate of a "non-primary" party will be included on general election ballots if he or she can submit a supporting petition which is signed by at least three percent of registered eligible voters. A "non-primary" party is a political organization which has presented the state a petition asking official recognition and signed by at least ten thousand of Maryland's registered voters. MD. CODE ANN. art. 33 § 4B-1(a) (1986).

The nature of judicial scrutiny regarding this type statute is well established. The Supreme Court has consistently held that, because of the fundamental impor-

tance of allowing voters to support candidates of their choice, states cannot unduly burden efforts to achieve a place on the ballot. Yet the Court has also recognized that states have a legitimate, and indeed a compelling interest, in requiring a candidate to show a significant "modicum of support" before permitting his or her name on an official ballot. *Munro v. Socialist Workers' Party*, 479 U.S. 189, 193-94 (1986); *American Party of Texas v. White*, 415 U.S. 767, 782 n.14 (1974); *Jenness v. Fortson*, 403 U.S. 431, 442 (1970). In advancing its interest a state can require independent and minority-party candidates to submit petitions signed by at least five percent of recent voters. *Jenness* at 438; *Storer v. Brown*, 415 U.S. 724, 738-40 (1974). Such evidence allows the state to preserve the integrity of the electoral process and to avoid voter confusion. *See American Party of Texas*, 414 U.S. at 782 n.14.

We find the Maryland statute falls well within the zone of permitted restrictions. Appellants are clearly wrong in claiming that the Maryland petition requirement cannot be justified as a proper means of showing a significant modicum of support. First, Maryland's three percent requirement is clearly less imposing than the Georgia statute scrutinized in *Jenness*. Moreover, appellants' attempt to distinguish *Jenness*, because the candidate here belongs to a state certified political party, is not persuasive. Appellant seems to believe that simply because a state chooses to recognize the existence of a party that the state must then automatically grant the candidates of such a party a place on the ballot. Such a proposition ignores the fact that a state's interests in regulating political parties and in avoiding a long and complicated ballot are not identical. The irony of appellants' position is that if successful it would encourage Maryland to raise petition requirements for small parties in an effort to control access to the ballot. The likely effect for Maryland Libertarians would be to destroy the very recognition that the party now enjoys.

Appellants also argue that the statute places an unconstitutional burden on the candidates of "non-primary" political parties by requiring them to obtain a large number of signatures while the nominees of "primary" political parties are automatically placed on official ballots. Such a contention takes insufficient account of the fact that in order to qualify as a "primary" party an organization must achieve a high indicium of public support. A "primary" party must be the party of choice of at least ten percent of the state's eligible voters. MD. CODE ANN. art. 33, § 5-1 (1986). Because of this elevated standard, it is entirely reasonable for Maryland to infer adequate support for the nominee of a "primary" party, while at the same time rejecting such an inference for the representative of a party that has proven the support of less than one percent of the state's voters.

Finally, appellants suggest that *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986), provides a sound basis for invalidation of Maryland's petition statute. They claim that *Tashjian* stands for the proposition that when a political party is seeking to have its candidates placed on the ballot a state cannot force it to include non-party members in the process. We agree with the district court that, even if this interpretation of *Tashjian* is correct, there is nothing in the Maryland statute, implicitly or otherwise, that requires the Libertarian Party to appeal to non-Libertarians during its candidate selection and ballot qualification effort. Compare, for example, the appellants' ability to qualify a candidate by collecting signatures from any registered voter with the restrictions at issue in *Tashjian*. There, the court struck down a Connecticut law which explicitly excluded non-Republicans from Connecticut's Republican primaries. *Tashjian* at 211 n.1.

For the reasons stated above we affirm the judgment of the district court.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action Number R88-869

DR. IMAD ALDEAN AHMAD, *et al.*

v.

GENE M. RAYNOR

August 19, 1988
Baltimore, Maryland

The above-entitled case came on for Hearing before The Honorable Norman P. Ramsey, at 10:00 a.m.

APPEARANCES

For the Plaintiffs:

Richard E. Gardiner, Esquire

For the Defendant:

Jack Schwartz, Esquire

Carmen M. Shepard, Esquire

PROCEEDINGS

THE CLERK: The matter now pending before this Court is Civil Action Number R88-069 Dr. Imad Aldean Ahmad, et al. versus Gene M. Raynor in for the purposes of Hearing.

EXCERPT OF PROCEEDINGS

BENCH OPINION

THE COURT: Ladies and gentlemen, because of the nature of the case and the importance of it to Dr. Ahmad and his Party, and because of the importance of it to the electoral process, I am going to give a Bench Opinion, and I will only reserve the right I usually reserve to clean up the syntax or the grammar. You always think you are being so articulate, and then you see what the reporter got, and you realize you don't think you could have said something, but you are not prepared to argue with the reporter since she was taking it down verbatim. You also tend to use run-on sentences and make misstatements as to cites and so on. These I will clean up. I will not change the actual decision, nor will I change materially any part of the body of the opinion, but in the event of appeal, I will certainly reserve the right to review my Reporter's notes and put in periods and semicolons and colons.

This is a suit brought by the Libertarian Party of Maryland and its nominee for the United States Senate, Dr. Imad Aldean Ahmad, challenging the constitutionality of the Maryland election laws that have to this point prevented Dr. Ahmad's name from being placed on the general election ballot for the fall election. Although the plaintiffs filed a motion for preliminary injunction with their complaint, the parties have since filed, and have fully briefed, and now argued, cross motions for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. I agree with the

parties that this case is ripe for decision. In the interest of protecting the rights of those who seek to avail themselves of a position on the ballot, I think that it is important to decide this issue early. I will move on to the merits of the case without addressing the preliminary injunction. My decision will be a decision on the merits for all purposes, including appeal.

Under the Maryland election law, there are two processes available to those who wish to have their names placed on the general election ballot. Those who wish to run as a nominee of a party claiming 10% or more of the state's registered voters, today Democrats and Republicans, must win their party's primary election. I suppose there are some western states—Minnesota is the one that comes to mind most quickly—where Democrats and Republicans are not the major parties. In Maryland, with rare exceptions, only those who win in the primary are permitted to progress to the general election. *See* Md. Ann. Code art. 33, subsection 5-1(a) and 8-2 (1986 Repl. Vol. and 1987 Supp.).

The other process applies to independent candidates and minor political parties that exist by virtue of having collected 10,000 petition signatures and garnering at least 3% of the vote in each subsequent presidential or gubernatorial election. *See* Md. Ann. Code art. 33, subsection 4B-1 and 4C-1. Under this process, the party does not hold a primary, but is permitted to follow its own bylaws and constitution to select its nominee. Once selected, the nominee, or independent candidate, must secure a petition signed by 3% of the registered voters in order to proceed to the general election. *See* Md. Ann. Code art. 33, section 7-1.

In this case, according to the allegations of the plaintiffs' complaint, which for the purpose of this opinion I am accepting as correct, the Libertarian Party of Maryland is one of the State's recognized minor parties at

this time. Pursuant to the constitution and the bylaws of that party, the Libertarians have nominated Dr. Ahmad, a 39-year old resident and a registered voter of Maryland, to be their candidate for the United States Senate this fall. In March of 1988, without having collected the signatures of 3% of Maryland's registered voters, Dr. Ahmad and the party asked the State Election Board to place Dr. Ahmad's name on the fall general election ballot. Because Dr. Ahmad had not collected the requisite signatures, the board refused the request. It is this refusal which prompted Dr. Ahmad and the party to file the suit which is before the Court today.

In their complaint and in their subsequent pleadings in the case, the plaintiffs assert that Maryland's nominating petition process unduly burdens the first and fourteenth amendment rights which they have to free association in furtherance of the political beliefs which they hold and that the Maryland petition process does not advance any compelling state interest. For relief, they seek declaratory judgment and an injunction which would compel Maryland's Election Board to place Dr. Ahmad's name on the November ballot as the Libertarian nominee for the office of U.S. Senator.

Restrictions on a political party's right to have candidates run in a general election undoubtedly impinge upon the party members' first amendment right to associate for political purposes, as well as the rights of qualified voters to cast their votes effectively. Nonetheless, these associational rights are not absolute rights and must be qualified if elections are to be run fairly and effectively. To this end, and recognizing that the states' interest in having fair and effective elections is compelling, the Supreme Court has upheld restrictions that ". . . condition access to the general election ballot by a minor-party or independent candidate upon a showing a modicum of support among the potential voters for the office." *Munro v. Socialist Workers Party*, 107 S. Ct.

533, 537 (1986) (citing *American Party of Texas v. White*, 415 U.S. 767 (1974) and *Jenness v. Fortson*, 403 U.S. 431 (1971)).

In *American Party of Texas v. White*, minor-party candidates were required to demonstrate their support by securing petition signatures from at least 1% of those voting in the previous gubernatorial election. Candidates could secure the requisite number of petition signatures at precinct nominating conventions and by supplemental petitions following the convention. Voters signing these supplemental petitions had to swear under oath that they had not participated in another party's primary election or nominating process. *See American Party of Texas*, 415 U.S. at 772-75. Because the Texas requirements were designed to preserve the integrity of the election process in the view of the Supreme Court, the Supreme Court upheld the statute. *See American Party of Texas*, 415 U.S. at 782.

In *Jenness v. Fortson*, 403 U.S. 431 (1971), the Georgia statute at issue required independent candidates and minor-party candidates wishing to run in a general election to demonstrate their support by submitting petitions signed by at least 5% of the voters eligible to vote in the last election for the office in question. Under the Georgia election technique, independent and minor-party candidates were those whose political organizations had not garnered at least 20% of the vote at the most recent gubernatorial or presidential election. *See Jenness*, 403 U.S. at 432. Again, this statute was upheld by the Supreme Court because it felt that the minimal support requirements of the statute were a reasonable way to avoid confusion and deception in the general election. *See Jenness*, 403 U.S. at 442.

Next to the Texas and Georgia laws at issue in *American Party of Texas* and *Jenness*, Maryland's law is not constitutionally offensive. Under the Maryland system, a candidate for office, whether or not he is affiliated with

a recognized party and without regard to the identity of that party if he is so affiliated, must clear some initial hurdle in order to run in a general election. Though Democrats and Republicans must win the primary while minor-party and independent candidates are required to submit nominating petitions, both hurdles are designed to limit the general election to candidates who have demonstrated some support.

If anything, the Maryland system is less restrictive than the Georgia system certainly and the Texas system. Because Maryland candidates need only submit petitions from 3% of Maryland's registered voters, and because these signatures may come from those who have voted in Maryland's primaries, as distinct from excluding those who have participated in the primaries, the Maryland system actually is less burdensome in its requirements and requires a demonstration of less support to participate in the general elections than did the Texas and Georgia systems.

To avoid this conclusion, the plaintiffs suggest and argue that the Maryland restrictions are too broad to accomplish the recognized objective of limiting the general election to bonafide candidates. They point to the Libertarian Party's status as a registered party in Maryland and then argue that because their party has already demonstrated the breadth of its support, any additional ballot-access requirements for the candidates of its party are necessarily overbroad and can be said to serve no legitimate state purpose. I do not agree with their argument.

Under the Maryland scheme, party support is not the equivalent of candidate support. Regardless of their party affiliation, all candidates must demonstrate some level of statewide support in order to have their names appear on the general election ballot. By winning their party's nomination in a primary election, a Democratic

or Republican candidate has demonstrated that he has the backing of a substantial number of his party's registered voters. Even though minor-party candidates such as Ahmad have already garnered their party's nomination by the time they set out to collect nominating signatures on their petitions, the nomination petition requirements serve the same function of winnowing out as does the primary process. It prevents the general election from being overrun by candidates whose support is so minimal that their presence on the ballot form detracts from and trivializes the general election. As such, I find that the requirement does not suffer from overbreadth.

Plaintiffs' citation of *Mathers v. Morris*, 515 F. Supp. 931 (D. Md. 1981) (Young, J.) lends no support to their overbreadth argument. In *Mathers*, the Libertarian Party of Maryland and its nominee for a special congressional election asserted that Maryland's deadline for filing nomination petitions fell so soon after the election was announced that it impermissably burdened their free speech and association rights. Although Judge Young agreed with plaintiffs as to the deadline, he rested his decision only on the deadline as I read the opinion. He said nothing about the propriety of the nomination-petition requirement itself, except, as has been noted in colloquy with counsel, the one reference to it in the course of the opinion which has been quoted by the court and counsel. *See Mathers*, 515 F. Supp. at 934-35. In fact, the balance of the opinion of Judge Young was devoted to rejecting plaintiffs' challenge to Maryland's basic rule for recognizing minor political parties.

As an alternative, plaintiffs point to Maryland's procedures for filling vacancies and for nominating unopposed primary candidates and argue that these rules discriminate against other-party candidates such as Dr. Ahmad. I do not agree with the argument advanced by the plaintiffs in that regard.

In pertinent part, Maryland's vacancy rule provides that

> [i]n the event of any vacancy occurring because of the death or resignation of any person nominated . . . as a candidate for United States Senator . . . the vacancy shall be filled by the central committee for the entire state of the political party to which the nominee belongs.

Md. Ann. Code art. 33, subsection 9-2(b). This procedure applies equally to the Libertarian Party. If Dr. Ahmad in fact becomes the Libertarian Party's nominee for Senate and is eligible for appearance on the ballot by submitting the requisite nominating petition, and then for some reason should withdraw from the race or some other event should befall Dr. Ahmad which would make the statute applicable, the Libertarian Party could fill the unexpected vacancy without having to resubmit an additional petition. In that regard therefore, the rule is equal in its application and not discriminatory.

Maryland's unopposed candidate rule I find equally unoffensive. In pertinent part, it provides that

> [W]henever only one candidate of any [major] political party has qualified to have his name placed upon the official primary election ballot at the expiration of the time allowed, for any public office or position, a certificate of nomination or selection shall be issued to him forthwith.

Md. Ann. Code Art. 33, Subsection 8-1(b)(2). Although Maryland's election law does not carry a similar rule for minor-party candidates such as Dr. Ahmad, the absence of such a rule for minor parties does not imply discrimination. Dr. Ahmad does not qualify for the general election simply by winning the Libertarian Party's nomination. Whether he ran unopposed to get this nomination or he defeated other Libertarian nominees, the last step to general election participation and appearance on the

ballot—the step that is analogous to primary participation by major party candidates—is the collecting of the nomination petition signatures. Because the petitions are always designed to demonstrate support for one individual candidate as distinct from the party, the concept of the unopposed petition nominee or of a special rule for unopposed petition nominees simply does not make any logical sense.

Finally, throughout their briefs and in their arguments today, plaintiffs have relied on *Tashjian v. Republican Party of Connecticut*, 107 S. Ct. 544 S. Ct. 544 (1986) for the proposition that a political party cannot be forced to rely on non-party members' votes or signatures in securing office for its candidates. Even if I find that the plaintiffs' reading of *Tashjian* is correct—a dubious assumption given that *Tashjian* dealt with a Connecticut statute limiting the Republicans' right to associate with independent voters, not its right to disassociate from them—*Tashjian* does not and could not invalidate Maryland's nomination petition requirements. Though Dr. Ahmad may look to non-Libertarian voters in meeting the requirement, nothing forces him to do so. The Libertarian Party is recognized as a minor party in Maryland because it has collected 10,000 petition signatures. If Dr. Ahmad is the Libertarians' choice for Senate, presumably he should be able to collect the petitions he needs from voters that have already expressed their loyalty to the Libertarian Party and who can be persuaded to become adherents to the Libertarian Party.

In sum, I find no constitutional infirmity in Maryland's nominating-petition requirement for minor-party candidates. I find the requirement is designed to insure that all general election candidates enjoy some modicum of support in the state and as such, it is not a violation of plaintiffs' free association rights. Accordingly, I will enter an Order granting judgment for the defendant.

(Conclusion of Bench Opinion.)

CERTIFICATE

I, Linda R. Prince, Official Reporter for the United States District Court for the District of Maryland, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and accurate transcript of the proceedings made in the aforementioned and numbered case on the date hereinbefore set forth, and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

/s/ Linda R. Prince
LINDA R. PRINCE
Official Court Reporter

Date: 8-19-88

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2605

IMAD ALDEAN AHMAD, *et al.*,
Plaintiffs-Appellants,

v.

GENE M. RAYNOR, ETC.,
Defendant-Appellee.

ON PETITION FOR REHEARING

[Filed Jan. 5, 1989]

Upon consideration of appellants' petition for rehearing.

IT IS ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Chapman, with the concurrence of Judge Widener and Judge Hall.

For the Court

John M. Greacen
Clerk